

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRESENIUS MEDICAL CARE
HOLDINGS, INC., et al.,

No. C 03-1431 SBA

Plaintiffs,

ORDER

v.

[Docket No. 436, 441, 446, 448, 473, 477,
487, 493, 498, 597]

BAXTER INTERNATIONAL, INC., et al.,

Defendants.

On March 28, 2006, this Court issued an Order in the above-captioned matter that, *inter alia*, continued the April 11, 2006 hearing on Fresenius' Motion for Summary Judgment of Invalidity of the Asserted Claims of U.S. Patent Nos. 5,247,434 and 6,284,131 [Docket No. 436], Fresenius' Motion for Summary Judgment of Invalidity of the Asserted Claims of U.S. Patent Nos. 5,326,476 and 5,744,027 [Docket No. 441], Baxter's Motion for Partial Summary Judgment of Validity [Docket No. 448], Baxter's Motion to Bar Fresenius' Proffered Damages Expert Professor Rubinfeld [Docket No. 446], Baxter's Motion to Strike Fresenius' Best Mode and Anticipation Defenses [Docket No. 473], and Baxter's Motion to Bar the Expert Testimony of Jeff Riley [Docket No. 477] to May 9, 2006 at 1:00 p.m. The Court also granted Baxter's Administrative Motion for Order Shortening Time [Docket No. 579] and thereby permitted Baxter leave to file its Motions to Strike [Docket Nos. 487, 493, 498] such that

1 the Motions would be heard on May 9, 2006, in conjunction with the hearing on the summary judgment
2 motions.

3 Later the same day, without first seeking leave of Court, Baxter filed another Motion to Strike
4 [Docket No. 597], this time seeking to strike the declaration of one of Fresenius' proffered experts,
5 Richard Alan Griewski.

6 The Court hereby admonishes Baxter for filing another motion without seeking leave of Court
7 or demonstrating the existence of good cause. This Court's previous Order quite clearly explained to
8 Baxter that the Court does not appreciate its dilatory, piecemeal approach to briefing this matter.
9 Baxter's decision to file yet another motion in direct contravention of the Court's scheduling Order
10 strongly suggests that Baxter has little regard for the Court's explicit directives. Nevertheless, in the
11 interests of justice, expediency, and judicial economy, the Court will consider Baxter's Motion to Strike
12 the Declaration of Richard Alan Griewski in Opposition to Defendants' Motion for Partial Summary
13 Judgment of Validity and will permit the Motion to be heard on May 9, 2006.

14 **To clarify any ambiguity that may have been created by the Court's March 28, 2006 Order,**
15 **however, the Court reiterates that the motion cut-off has passed and therefore the parties DO**
16 **NOT have leave to file any new motions.** Further, since the previous briefing schedule was not altered
17 by the March 28, 2006 Order, the Court considers the following motions **fully submitted**: (1) Fresenius'
18 Motion for Summary Judgment of Invalidity of the Asserted Claims of U.S. Patent Nos. 5,247,434 and
19 6,284,131 [Docket No. 436]; (2) Fresenius' Motion for Summary Judgment of Invalidity of the Asserted
20 Claims of U.S. Patent Nos. 5,326,476 and 5,744,027 [Docket No. 441]; (3) Baxter's Motion for Partial
21 Summary Judgment of Validity [Docket No. 448]; (4) Baxter's Motion to Bar Fresenius' Proffered
22 Damages Expert Professor Rubinfeld [Docket No. 446]; (5) Baxter's Motion to Strike Fresenius' Best
23 Mode and Anticipation Defenses [Docket No. 473]; (6) Baxter's Motion to Bar the Expert Testimony
24 of Jeff Riley [Docket No. 477].

25 The briefing schedule set forth in the March 28, 2006 Order pertaining to Baxter's Motion to
26 Strike Declaration of Charles Ragsdale [Docket No. 487], Baxter's Motion to Strike PTO Documents
27 [Docket No. 493], and Baxter's Motion to Strike Exhibits 1 and 13 to Fresenius' Motion for Summary
28 Judgment of Invalidity of '476 and '026 Patents [Docket No. 498] remains in effect. However, to allow

Fresenius sufficient time to review the Motion to Strike the Declaration of Richard Alan Griewski [Docket No. 597], a different briefing schedule shall apply to that motion.

Accordingly,

IT IS HEREBY ORDERED THAT, as previously ordered, Fresenius shall file its oppositions, if any, to Baxter's Motion to Strike Declaration of Charles Ragsdale [Docket No. 487], Baxter's Motion to Strike PTO Documents [Docket No. 493], and Baxter's Motion to Strike Exhibits 1 and 13 to Fresenius' Motion for Summary Judgment of Invalidity of '476 and '026 Patents [Docket No. 498] **no later than April 4, 2006.** Baxter may file its reply briefs, if any, **no later than April 7, 2006.**

IT IS FURTHER ORDERED THAT Fresenius shall file its opposition to Baxter's Motion to Strike the Declaration of Richard Alan Griewski [Docket No. 597] **no later than April 7, 2006.** Baxter DOES NOT have leave to file a reply brief.

IT IS FURTHER ORDERED THAT the following motions are deemed fully submitted: Fresenius' Motion for Summary Judgment of Invalidity of the Asserted Claims of U.S. Patent Nos. 5,247,434 and 6,284,131 [Docket No. 436]; (2) Fresenius' Motion for Summary Judgment of Invalidity of the Asserted Claims of U.S. Patent Nos. 5,326,476 and 5,744,027 [Docket No. 441]; (3) Baxter's Motion for Partial Summary Judgment of Validity [Docket No. 448]; (4) Baxter's Motion to Bar Fresenius' Proffered Damages Expert Professor Rubinfeld [Docket No. 446]; (5) Baxter's Motion to Strike Fresenius' Best Mode and Anticipation Defenses [Docket No. 473]; (6) Baxter's Motion to Bar the Expert Testimony of Jeff Riley [Docket No. 477]. **Except as expressly set forth herein or as set forth in the Pre-Trial Scheduling Order, the parties MAY NOT file any further motions, papers, or documents with the Court concerning this matter without first seeking leave of Court and demonstrating the existence of good cause. Any further disregard for any of the Court's Orders may result in an order to show cause why sanctions should not issue.**

IT IS SO ORDERED.

Dated: 3/29/06


SAUNDRA BROWN ARMSTRONG
United States District Judge